## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

INDYMAC BANK, F.S.B.,	)
a Federal Savings Bank,	)
Plaintiff,	)
<b>v.</b>	) No. 07 C 6226
GANESAN VISVABHARATHY, an individual	) Judge Joan B. Gottschall
Defendant.	)

## MOTION TO VACATE ORDER OF DEFAULT AND QUASH SERVICE

Defendant, Ganesan Visvabharathy, moves for an Order vacating the Court's January 17, 2008 order of default and quashing the substituted service allegedly made by plaintiff, Indymac Bank, F.S.B. ("Indymac") on him. In support of his motion, Dr. Visvabharathy submits the accompanying Memorandum in Support, with exhibits, and states as follows:

- 1. The order of default entered by the Court on January 17, 2008 was based on Indymac's assertion that Dr. Visvabharathy failed to respond to a properly-served complaint and summons.
- 2. In truth, Indymac never effectively served Dr. Visvabharathy, because it attempted substituted service at a location that had not been Dr. Visvabharathy's abode for at least a year and a half.
- 3. Absent effective service, it is axiomatic that an order of default should not issue, and therefore the January 17, 2008 Order should be vacated. The Court should also quash Indymac's ineffective service.

WHEREFORE, for the above reasons and those set forth in the accompanying Memorandum in Support, defendant Ganesan Visvabharathy respectfully requests that this Court

enter an Order vacating its January 17, 2008 order of default, quashing service, and awarding such other and further relief as the Court deems proper.

Dated: February 14, 2008

Respectfully submitted,

GANESAN VISVABHARATHY

By: s/ Daniel A. Shmikler
One of his attorneys

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## CERTIFICATE OF SERVICE

I, Daniel Shmikler, an attorney, hereby certify that on February 14, 2008, I electronically filed **Defendant's Motion To Vacate Order Of Default And Quash Service** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following persons listed below:

Gary I. Blackman, Esq. James G. Martignon, Esq. Levenfeld Pearlstein, P.C. 2 North LaSalle Street Suite 1300 Chicago, Illinois 60602

/s/ Daniel A. Shmikler
Daniel A. Shmikler